

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

CHARLES SIMS

§

VS.

§

CIVIL ACTION NO. 5:12cv46

MICHAEL CARVAJAL

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Charles Sims, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court previously referred this matter to the Honorable Caroline M. Craven, United States Magistrate Judge, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The Magistrate Judge recommends that the petition be dismissed without prejudice for failure to exhaust administrative remedies.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Petitioner filed objections to the Report and Recommendation.

The Court has conducted a *de novo* review of the objections. After careful consideration, the Court is of the opinion the objections are without merit. Petitioner failed to exhaust his administrative remedies through the last three steps of the applicable grievance procedure and has not demonstrated that exhausting his administrative remedies would be futile.

Further, even if petitioner had exhausted his administrative remedies before filing his petition, his claim would be without merit. Petitioner seeks credit toward his federal sentence for the period beginning June 7, 2003, and ending October 4, 2004, the date his federal sentence was imposed. However, documents submitted by the respondent demonstrate petitioner received credit toward a state sentence for such period of time. Pursuant to 18 U.S.C. § 3585, an inmate may only receive credit toward a federal sentence for time spent in official detention prior to the

imposition of the federal sentence if the time has not also been credited toward a state sentence. As petitioner received credit toward his state sentence for the period of time described above, he may not also receive credit toward his federal sentence for such period.

ORDER

Accordingly, the objections filed by the petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED** as the opinion of the Court. A final judgment shall be entered dismissing this petition for writ of habeas corpus in accordance with the recommendation of the Magistrate Judge.

It is SO ORDERED.

SIGNED this 7th day of November, 2013.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE